

**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW JERSEY**

IN RE K-DUR ANTITRUST LITIGATION :	:	
	:	
	:	Civil Action No. 01-1652 (JAG)
	:	(consolidated cases)
	:	
This Document Relates To:	:	MDL Docket No. 1419
	:	
All Direct Purchaser Actions	:	<b>ORDER</b>
	:	
	:	

**GREENAWAY, JR., U.S.C.J.**<sup>1</sup>

On February 6, 2009, Special Master Stephen M. Orlofsky submitted a report and recommendation (“R&R”) (Docket No. 733), pursuant to this Court’s appointment order (Docket No. 316) and Federal Rule of Civil Procedure 53. In the R&R, Special Master Orlofsky concluded that: (1) the Motion for Summary Judgment as to All Claims Brought by Direct Purchaser Plaintiffs (“DP Plaintiffs”) Related to the Upsher Settlement, filed by defendants Schering Plough Corporation (“Schering”) and Upsher-Smith Laboratories, Inc. (“Upsher”) (collectively, “Defendants”), should be granted; (2) Defendants’ Motion for Summary Judgment as to All Claims Brought by DP Plaintiffs Related to the ESI Settlement should be granted; (3) DP Plaintiffs’ Motion for Partial Summary Judgment as to the Applicable Framework for Analysis of Exclusion Payments should be denied; and (4) DP Plaintiffs’ Motion for Partial Summary Judgment as to the Exclusionary Scope of the ’743 Patent should be denied.

---

<sup>1</sup> Sitting by designation on the District Court.

Pursuant to Federal Rule of Civil Procedure 53(f), DP Plaintiffs filed objections to the R&R. (Docket No. 739.) As required by Rule 53(f), this Court has reviewed *de novo* the R&R and the submissions of all parties. Based on that review,

IT IS, on this 24<sup>th</sup> day of March, 2010,

ORDERED that Special Master Orlofsky's R&R (Docket No. 733) is adopted as the Opinion of this Court; and it is further

ORDERED that a copy of this Order be served on all parties within seven (7) days of the date of entry of this Order.

S/Joseph A. Green away, Jr.  
JOSEPH A. GREEN AWAY, JR., U.S.C.J.  
(Sitting by designation on the District Court)